BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.09.2023

Delivered on : 22.09.2023

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1754 of 2010
and
M.P.(MD)No.4 of 2010

Iffco Tokyo General Insurance Co. Limited,
R.S.Puram, Coimbator. : Appellant/2nd Respondent

Vs.

1.Thirunavukkarasu : Respondent/ Petitioner

2.Mohamed Arif : Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 16.09.2008 made in M.C.O.P.No.658 of 2006 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.G.Karnan, for R1.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.658 of 2006, dated 16.09.2008 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Thanjavur.

2. The appellant/insurance company, who was made liable to pay compensation of Rs.1,21,000/- with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 23.03.2006, challenged the liability mulcted on it.

3. It is pertinent to note that the appellant/insurer has not disputed the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the second respondent/first respondent driver and also the quantum of compensation awarded at by the Tribunal.

4. The learned counsel for the appellant would submit that the policy of insurance issued by the appellant in favour of the second respondent/ owner was cancelled on account of dishonor of the cheque issued by the owner of the vehicle towards premium for the policy of

insurance; that the impugned accident had taken place after the cancellation of the policy of insurance and as such, there was no insurable interest between the appellant and the second respondent and that the Tribunal ought to have found that in the absence of any contract of insurance in force at the material time of accident, there can be no award on shoulders of the insurance company and that therefore, the award of the Tribunal mulcting liability on the appellant/second respondent is liable to be set aside.

5. As rightly pointed out by the learned counsel for the appellant, the appellant/insurer in their counter statement filed before the Tribunal has raised a specific stand that the offending vehicle was not having valid insurance coverage on the date of accident and the relevant passage is extracted herein.

> " *At the outset, this respondent humbly submits that on the date of the accident, the alleged vehicle was not insured with this respondent Insurance Company The alleged vehicle involved in the accident in Toyota Innova car (for Registration) The insured Mohamed Ariff issued a cheque to the Second Respondent towards the payment of premium for a sum of Rs 28.583/- drawn on India Bank dated 24-12-2005. The relevant cheque No.is 632968 The cheque issued by the first respondent*

was bounced on 3-1-2006 with an endorsement of in-sufficient fund. As the premium amount was not paid, this respondent cancelled the policy issued in favor of the first respondent and the relevant Policy No. is 33674350. As the policy was cancelled on 3-1-2006, on the date of the accident, the first respondent's vehicle was not insured with this respondent Insurance Company. In other words, the first respondent did not take steps to pay the premium amount after the bouncing of cheque. This respondent deserves its rights to initiate criminal proceedings against the first respondent. Any how, it is certain that on the date of the accident, there is no policy between the first respondent and this respondent. On this footing alone, the original petition itself has to be dismissed as against this respondent Insurance Company."

6. During trial, the claimant has examined himself as P.W.1 and Thiru.Rathinasababathy, Medical Officer as P.W.2 and exhibited 15 documents as Ex.P.1 to Ex.P.15.

7. It is pertinent to note that though the second respondent/ first respondent/owner has filed counter statement, subsequently at the time of trial, remained ex-parte. The appellant/second respondent/insurer has adduced neither oral nor documentary evidence. Though the insurer has

alleged that the owner of the vehicle had issued a cheque bearing No.632968, dated 24.12.2005 for Rs.25,583/- drawn on Indian bank in favour of the second respondent/first respondent towards payment of premium, the same was returned dishonored on 03.01.2006 for want of sufficient funds in the bank account and that therefore, the insurer has cancelled the policy issued in favour of the owner, the insurer has not produced any iota of evidence to prove the above aspects.

8. Though the insurer has alleged that after the dishonor of the cheque, the insurance policy issued in favour of the owner was cancelled on 03.01.2006, they have not produced the cancellation order. Moreover, it is not the specific case of the insurer that after cancelling the policy, the same was intimated to the owner of the vehicle and also the competent authorities.

9. As rightly contended by the learned counsel for the first respondent/second respondent, the Insurance Company has not informed the policy holder about the cancellation and the same was also not informed to RTO.

10. Considering the above, this Court has no hesitation to hold that since the insurer has miserably failed to prove that the insurance policy issued for the offending vehicle has been cancelled and the same was intimated to the owner of the vehicle and also to the concerned RTO and the appellant/ second respondent /insurer cannot be absolved from the liability. Since the appellant/second respondent has produced nil evidence with regard to the defence taken in the counter statement, there was no occasion for the Tribunal to consider and decide the above aspects.

11.As already pointed out, the appellant has not disputed the quantum of compensation awarded by the Tribunal and hence the impugned award is liable to be confirmed. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

12. In the result, the Civil Miscellaneous Appeal is dismissed and the impugned order, dated 16.09.2008 passed in M.C.O.P.No.658 of 2006 on the file of the Motor Accidents Claims Tribunal (Additional Sub

Court), Thanjavur, is confirmed. Parties are directed to bear their own costs. Consequently connected Miscellaneous petition is closed.

22.09.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

1.The Motor Accidents Claims Tribunal
(Additional Sub Court), Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1754 of 2010
and
M.P.(MD)No.4 of 2010

05.09.2023